

# **EXHIBIT**

## **#90**

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**From:** Evans, Carrie  
**Sent:** Wednesday, June 21, 2006 8:59 AM  
**To:** Mohrle, Paul  
**Subject:** FW: Cash Forecast for 06/21/06  
**Attachments:** cashmodel3.xls

I just spoke to Avery – if we get signatures today – we will have the money by Friday

-----Original Message-----

**From:** Elmo, Angelo  
**Sent:** Wednesday, June 21, 2006 8:46 AM  
**To:** Mohrle, Paul; Evans, Carrie; Vigliano, Alfred; Auriemma, Robert  
**Subject:** Cash Forecast for 06/21/06

Paul, we could have a problem paying taxes this week, based on present numbers, also this will be 3<sup>rd</sup> straight day we are negative in BOA.

Angelo

BMC040374

# **EXHIBIT**

## **#91**

**SILBERBERG & KIRSCHNER LLP**

**ATTORNEYS AT LAW**

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July 6, 2010

VIA FEDERAL EXPRESS

Peter J. Pizzi, Esq.

Connell Foley LLP

85 Livingston Street

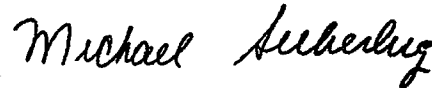
Roseland, New Jersey 07068-3702

Re: Bayonne Medical Center

Dear Mr. Pizzi:

It has come to my attention that in addition to the loan documents forwarded to you on May 17, 2010, there was a UCC-1 Financing Statement prepared by our office in connection with the loan. I am enclosing a CD containing the document with its metadata preserved.

Very truly yours,



Michael Silberberg

MS:cf  
enclosure

cc: Fred Gruen, Esq.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY  
CASE NO. 07-15195 (MS)  
CHAPTER 11

In re BAYONNE MEDICAL CENTER, :

Debtor, :

**COPY**

BAYONNE MEDICAL CENTER, :

Debtor and :

Debtor-in-Possesssion; and ::

ALLEN D. WILEN, in his :

capacity as Liquidating :

Trustee and Estate :

Representative for the Estate ::

of Debtor, Bayonne Medical :

Center, :

DEPOSITION OF:

MICHAEL  
SILBERBERG

Plaintiff, :

-vs- :

BAYONNE/OMNI DEVELOPMENT, :

L.L.C., a New Jersey limited :

liability company; et al., :

Defendants. :

-----  
B E F O R E:

SHARON B. STOPPIELLO, a Certified Court  
Reporter and Notary Public of the State of New  
Jersey, at the offices of CONNELL FOLEY, L.L.P., 85  
Livingston Avenue, Roseland, New Jersey, on MONDAY,  
MAY 3, 2010, commencing at 10:22 a.m., pursuant to  
Notice.

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1 A P P E A R A N C E S:

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5

6

BY: PETER J. PIZZI, ESQ.  
NEIL V. SHAH, ESQ.  
Counsel for the Plaintiff

7

8

GRUEN & GOLDSTEIN, ESQS.  
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P (908) 687-2030  
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1 I N D E X  
2 WITNESS DIRECT CROSS REDIRECT RECROSS  
3 MICHAEL SILBERGERG  
4 BY MR. PIZZI 4  
5  
6

7 E X H I B I T S  
8 NO. DESCRIPTION I.D.  
9 P-27 Subpoena in an adversary proceeding for  
10 Michael Silberberg dated 4/21/10 with  
attached Schedule A 4  
11 P-28 Subpoena in an adversary proceeding for  
12 Silberberg & Kirschner dated 4/21/10  
with attached Schedule A 4  
13  
14  
15  
16  
17

18 REQUESTED INFORMATION:  
19 Page 16 - E-mail in Mr. Silberberg's files from Mr.  
Eisenreich to Mr. Silberberg  
20 Page 26 - Invoice to Mr. Eisenreich for preparing  
Exhibits A and B to the subpoena  
21 Page 29 - Promissory note and Corporate Resolution  
22 as it exists on Mr. Silberberg's server  
23  
24  
25

1 (Two subpoenas in an adversary  
2 proceeding, both dated 4/21/10, one for  
3 Michael Silberberg and one for Silberberg &  
4 Kirschner are received and marked P-27 and  
5 P-28 for identification by the Reporter.)

6 M I C H A E L S I L B E R B E R G, 55 Old Nyack  
7 Turnpike, Suite 210, Nanuet, New York,  
8 is sworn.

9 DIRECT EXAMINATION BY MR. PIZZI:

10 Q. Can you state your full name for the  
11 record, sir?

12 A. Michael Silberberg,  
13 S-i-l-b-e-r-b-e-r-g.

14 Q. And your residence address?

15 A. 14 Orchard Hill Drive, Monsey,  
16 M-o-n-s-e-y, New York, 10952.

17 Q. My name is Peter Pizzi and I  
18 represent the Plaintiff in this action, Bayonne  
19 Medical Center and Allen Wilen, in his capacity as  
20 liquidating trustee and estate representative of the  
21 Debtor, Bayonne Medical Center.

22 We're here to take your deposition in  
23 connection with this case. First of all, do I  
24 understand that you're a practicing lawyer?

25 A. A limited practicing attorney.



1 Q. Are you someone who has experience in  
2 litigation?

3 A. No.

4 Q. Well, then I'll act as if you have no  
5 experience in litigation and, therefore, give you a  
6 couple of basic rules. This is a deposition, where  
7 we get the opportunity to ask questions and obtain  
8 information from people who have knowledge of the  
9 facts. The reporter is going to take everything  
10 down in booklet format. And the reporter has also  
11 administered to you the oath, that would be the same  
12 as if we were in a court of law with a judge and  
13 jury present.

14 Just make sure that you understand the  
15 question. If you don't understand the question,  
16 don't answer it, tell us you don't understand it.  
17 If you do answer the question, we're going to assume  
18 that you understood it. All your answers have to be  
19 verbal, as opposed to a nod, because the reporter  
20 can only take down what is said.

21 So those are basic ground rules. Do you  
22 understand what I've just communicated to you?

23 A. I do.

24 Q. Now, you were served with a subpoena,  
25 I believe, in this case, right?

1 A. Yes.

2 Q. Are Exhibits P-27 and P-28 the  
3 subpoenas that were served upon you?

4 A. Are they different?

5 Q. One is to you individually, P-27, and  
6 then P-28 is to a law firm called Silberberg &  
7 Kirschner.

8 A. Okay. It's possible I received two.  
9 It went to my office in Manhattan and I'm never  
10 there. They did send this to me, and I believe I  
11 received one and looked at one. But it's been a  
12 while. Well, not that long. But I have seen this.  
13 I have seen this. Are they pretty much identical?

14 Q. They're identical, except for the  
15 recipient. In other words, one is to the law firm  
16 and one is to you in name.

17 A. Okay.

18 Q. Before we get into those in detail,  
19 let me ask you, I understand you are licensed to  
20 practice law?

21 A. I am.

22 Q. And when did you become admitted to  
23 the bar?

24 A. Either 1990 or 1991.

25 Q. And where did you attend law school?

1 A. Fordham Law School.

2 Q. Did you attend law school out of  
3 college?

4 A. Yes.

5 Q. Where did you go to college?

6 A. Baruch College.

7 Q. Tell us the path your legal career  
8 took after law school.

9 A. I went to work for a law firm by the  
10 name of Frenkel, F-r-e-n-k-e-l, & Hershkowitz,  
11 H-e-r-s-h-k-o-w-i-t-z in Manhattan for about three  
12 years. And I guess in 1993 or 1994 I opened my own  
13 practice. I did that for about 12 years or so. And  
14 three, four, five years ago I started moving out of  
15 the practice of law and was more involved in  
16 business.

17 Q. And when you worked for Frenkel, your  
18 main office was in Manhattan?

19 A. Yes, 34th Street.

20 Q. When you opened your own practice,  
21 which I gather you operated for roughly 12 years,  
22 where was that located?

23 A. First in Lower Manhattan, 26  
24 Broadway, and later on in Midtown Manhattan, at  
25 various locations on Third Avenue.

1 Q. What areas did you practice in during  
2 that 12-year period?

3 A. Transactional real estate.

4 Q. Are you currently affiliated with  
5 something called Silberberg & Kirschner?

6 A. Yes.

7 Q. What is that?

8 A. That's a law firm.

9 Q. Where is it located?

10 A. 360 Lexington Avenue.

11 Q. What is your affiliation with that  
12 entity? Are you a partner?

13 A. A partner.

14 Q. And do you practice law with that  
15 entity?

16 A. Yes.

17 Q. When you practiced law over that  
18 12-year period, what was the name of the law firm?

19 A. I believe it probably started as  
20 Michael Silberberg, P.C., I don't recall. And  
21 shortly after I started that practice, I hired my  
22 now partner, Uri Kirschner, out of law school, and  
23 probably seven or eight years into that relationship  
24 he became a partner, and we formed Silberberg &  
25 Kirschner and we've had that ever since.

1 Q. What's the first name of Mr.  
2 Kirschner?

3 A. Uri, U-r-i.

4 Q. What area does Silberberg & Kirschner  
5 practice in?

6 A. Transactional real estate.

7 Q. And in terms of the business  
8 activities you have engaged in for roughly the past  
9 five years or so, can you describe those to us?

10 A. That's real estate, as well.

11 Q. Any particular kind of real estate?

12 A. Income producing, residential  
13 property, retail, some office space. Anything that  
14 we think we can make a couple of dollars in.

15 Q. Do you have partners in those  
16 endeavors?

17 A. I do.

18 Q. Do you have many? Do you have  
19 consistent partners?

20 A. I have a partner in my business, and  
21 then on a case-by-case, deal-by-deal basis, I may or  
22 may not have investors or partners in the deals.

23 Q. Are you acquainted with someone  
24 called Avery Eisenreich?

25 A. I'm sure I'm acquainted with him.

1 Q. How long have you known Mr.

2 Eisenreich?

3 A. I've known Mr. Eisenreich for a long  
4 time. Maybe close to 15 years, maybe a little less.

5 Q. And how did you come to be acquainted  
6 with him?

7 A. He was a client of mine for many  
8 years.

9 Q. When did he cease to be a client?

10 A. I don't know if he ever formally  
11 ceased to be a client. But as I scale down my  
12 activities as an attorney, I think he probably  
13 stopped using my firm. I think he on occasion may  
14 use the services of my partner, but he has  
15 associations with many attorneys. So I wasn't his  
16 exclusive attorney, but I did a fair amount of work  
17 for him over the years.

18 Q. Before you went into your business  
19 focused endeavor?

20 A. Correct.

21 Q. And have you engaged in real estate  
22 transactions with Mr. Eisenreich?

23 A. Over the years we've done some things  
24 together.

25 Q. Can you describe them?

1           A.       We often will -- not "often," but we  
2     have at times invested with other people, not  
3     necessarily in my deals, but we have mutual  
4     acquaintances who at times syndicate real estate  
5     deals, and we will often participate together in  
6     investing in some of those deals. That's basically  
7     it.

8           Q.       Have you done real estate deals with  
9     Mr. Eisenreich in the State of New Jersey?

10          A.       Many years ago I believe we bought a  
11     mortgage on a property in New Jersey together,  
12     myself, Mr. Eisenreich and a couple of other  
13     individuals. This dates back a number of years.

14          Q.       Do you remember the location?

15          A.       I don't.

16          Q.       Are there any current real estate  
17     projects or real estate endeavors in which you are  
18     involved that Mr. Eisenreich is also involved?

19          A.       Several.

20          Q.       What are those?

21          A.       I don't know that I want to go into  
22     the specifics without talking to him, but several  
23     office properties in major cities throughout the  
24     country.

25          Q.       Do you have any involvement in a real

1 estate project in Bayonne with Mr. Eisenreich?

2 A. No.

3 Q. By the way, have you ever taken  
4 depositions, conducted depositions in any manner as  
5 a lawyer?

6 A. On the receiving end?

7 Q. As a lawyer.

8 A. To depose someone?

9 Q. Correct.

10 A. No.

11 Q. You were served with a subpoena,  
12 which called for the production of documents. Do  
13 you have any documents responsive to the subpoena?

14 A. I don't.

15 Q. Let's look at, if you would, Schedule  
16 A. You have to go one page earlier. You're looking  
17 at Schedule A to Exhibit P-27, right? Are we on the  
18 same page?

19 A. Yes.

20 Q. Item 1 calls for documents between  
21 2002 and the present that involve Bayonne Medical  
22 Center and any of the people listed as (a) through  
23 (q), okay?

24 A. Correct.

25 Q. And you're telling us you have no



1 documents responsive to that request?

2 A. That is correct.

3 Q. And Item 2 calls for the production  
4 of any documents relating to the creation of the  
5 document called Exhibit A.

6 A. Correct.

7 Q. Which is styled as a promissory note.  
8 And Item 3 calls for production of any documents  
9 relating to Exhibit B, which is styled as a  
10 corporate resolution.

11 A. Correct.

12 Q. You're telling us you have no  
13 documents whatsoever responsive to Items 2 and 3 in  
14 the subpoena, right?

15 A. Correct.

16 Q. What efforts did you make to locate  
17 responsive documents?

18 A. I checked my files in my office in  
19 Nanuet, asked my secretary in Manhattan to check  
20 that office, and I checked a storage facility near  
21 my office in Nanuet to see if I had a file on this  
22 matter. I also checked my e-mails to see if I had  
23 any e-mails at all regarding this matter and found  
24 none.

25 Q. How far back do you have e-mails?

1 A. I don't know how far back.

2 Q. What's the e-mail address that you  
3 use today?

4 A. The e-mail address I use today, I use  
5 two, I use Ms@skllp.com and Ms@Berkleyllc.com.

6 Q. And it's B-e-r-k?

7 A. L-e-y l-l-c.com.

8 Q. What is Berkley, L.L.C.?

9 A. That's my real estate business.

10 Q. Where is it located?

11 A. In Nanuet is our office.

12 Q. And how many people are employed  
13 there, approximately?

14 A. One.

15 Q. Yourself?

16 A. No.

17 Q. One other person? Who is that, a  
18 secretary?

19 A. A secretary/bookkeeper, yes.

20 Q. So you looked in your e-mail mailbox  
21 for Ms@skllp.com and Ms@Berkleyllc.com and found  
22 nothing relating to Bayonne Medical Center?

23 A. Correct. Oh, I want to correct that.

24 Q. Yes.

25 A. I had an e-mail shortly before I

1 received this from Mr. Eisenreich telling me that I  
2 probably will be served with a subpoena, and he  
3 apologizes, since he knows I'm busy and don't  
4 normally have time. But he was letting me know that  
5 I would be getting a subpoena and I would be asked  
6 to testify.

7 MR. GRUEN: I'm going to, I guess,  
8 make a statement for the record. We're all  
9 sensitive to the attorney/client privilege. You've  
10 begun to reveal communications between you and Mr.  
11 Eisenreich, which you don't have the right to do,  
12 unless and until I waive the privilege on behalf of  
13 Mr. Eisenreich. I haven't waived the privilege yet.  
14 I am considering a limited waiver. But until I tell  
15 you otherwise, please do not discuss communications  
16 between Mr. Eisenreich.

17 THE WITNESS: All right.

18 Q. First of all, that e-mail would be  
19 responsive to the subpoena, would it not?

20 A. I didn't view it as such. I guess it  
21 could be. I didn't view it as such. It was  
22 basically a courtesy.

23 THE WITNESS: Is it okay if I  
24 respond?

25 MR. GRUEN: You've done it already,

1 so you can complete this limited narrative.

2 A. I think it was a courtesy from him.  
3 I think he felt he owed me that courtesy to tell me  
4 I'm going to be getting a subpoena, and he  
5 apologizes for any time that it may take out of my  
6 schedule.

7 Q. Whether it's a courtesy or not, it's  
8 a communication about Bayonne Medical Center after  
9 the date of May 2002 from Avery Eisenreich. So to  
10 me it looks like it's directly responsive to Item 1;  
11 therefore, I have to ask it to be produced. Is it  
12 possible someone can fax it today?

13 MR. GRUEN: It's going to be sent  
14 through me, and I'm going to determine whether I  
15 assert the privilege or not.

16 MR. PIZZI: No matter what, Mr.  
17 Gruen, Mr. Silberberg, there's such a thing as a  
18 privilege log. If it's privileged and you want to  
19 assert a privilege, you put it down on a log which  
20 says we contend this is privileged. One way or  
21 another, I have to see something about the document,  
22 date, time, who was cc'd, what have you. So I can't  
23 complete the deposition until I have that document.  
24 We can do it however you want to do it, but I can't  
25 complete the deposition without all the responsive

1 documents. We're going to ask you to produce it,  
2 whether a privilege is asserted or not, we'll deal  
3 with it.

4 Q. Now, did Mr. Eisenreich ask you to  
5 perform any legal services relating to Bayonne  
6 Medical Center?

7 MR. GRUEN: I am going to agree to a  
8 limited waiver of the privilege, limited to  
9 communications relating to the loan from the Omni  
10 entity to Bayonne Medical Center. As we go along, I  
11 may determine to expand the limited waiver, but at  
12 this point that is the extent of the limited waiver.

13 MR. PIZZI: Well, a limited waiver  
14 obviously requires consent in some way. And all I'm  
15 saying is I'm not taking a position one way or  
16 another about whether there is such a thing as a  
17 limited waiver. You're allowing him to testify in  
18 response to certain questions, that's fine, we'll  
19 take it at a step at a time.

20 Q. But at the time you received the  
21 e-mail from Mr. Eisenreich, had you been engaged to  
22 render legal services on his behalf relating to  
23 Bayonne Medical Center?

24 MR. GRUEN: Was that question at the  
25 time or as of the time?

1 Q. At the time you received the e-mail  
2 that you didn't bring with you today, had you been  
3 engaged by Mr. Eisenreich to render legal services  
4 on his behalf relating to Bayonne Medical Center?

5 A. Are you referring back to the date of  
6 this, 2006?

7 Q. Let's start again. You told us you  
8 got an e-mail from Mr. Eisenreich about this  
9 litigation, right?

10 A. Yes.

11 Q. And that was sometime after this  
12 litigation was filed, right?

13 A. I assume so. When was this  
14 litigation filed?

15 Q. You were subpoenaed in April of 2010,  
16 right? Yes?

17 A. Yes.

18 Q. And was it before or after you got  
19 the subpoena that you heard from Mr. Eisenreich by  
20 e-mail?

21 A. I would have to check.

22 Q. Was it in 2010 that you received this  
23 e-mail from Mr. Eisenreich?

24 A. Yes.

25 Q. So at that time, when you got this

1 communication from Mr. Eisenreich, had you been  
2 engaged by him to render legal services relating to  
3 Bayonne Medical Center?

4 MR. GRUEN: I'm going to object to  
5 the form of the question only because I think it's  
6 confusing, and I sense that it's confusing to the  
7 witness. And I'm not trying to lead him in any  
8 direction. But I interpret the question as meaning  
9 at that very point in time did you have any  
10 outstanding engagement from Eisenreich to render  
11 legal services. If that's what you mean and with  
12 that clarification, I would permit the witness to  
13 answer the question.

14 A. Is that your question? Because it  
15 was kind of confusing.

16 Q. I couldn't imagine a simpler  
17 question. I'm going to rephrase it.

18 A. Please.

19 Q. When you got the e-mail from Mr.  
20 Eisenreich, had you been engaged to do legal work  
21 for him about Bayonne Medical Center?

22 A. At the present or prior to that year  
23 or two back?

24 Q. At the present time, at the time you  
25 got the e-mail --

1 A. No.

2 Q. Did he, after you got this e-mail,  
3 ask you to do any legal work for him about Bayonne  
4 Medical Center?

5 A. No.

6 Q. So when you got the e-mail, he wasn't  
7 asking you to be his lawyer about this matter, was  
8 he?

9 A. No.

10 Q. So to me that's not a privileged  
11 communication. Again, I'd like to see the document.

12 Now, did there come a point in time before  
13 you got this e-mail from Mr. Eisenreich that he  
14 asked you to do anything about Bayonne Medical  
15 Center?

16 A. I believe so.

17 Q. When was that?

18 A. I don't recall, but from the date of  
19 this note, I assume sometime in 2006, roughly the  
20 date of this note.

21 MR. PIZZI: Just read that answer  
22 back for me, please.

23 (The last answer is read by the  
24 Reporter.)

25 Q. When you say "this note," you're



1 referring to Exhibit A to the subpoena, which is a  
2 promissory note?

3 A. Correct.

4 Q. Did you prepare Exhibit A to the  
5 subpoena?

6 A. I believe I did.

7 Q. Did you prepare Exhibit B?

8 A. It looks like it would have been  
9 prepared by my office, yes.

10 Q. And what tells you it would have been  
11 prepared by your office?

12 A. Just the style, the format.

13 Q. Who actually did that work?

14 A. It could have been a number of  
15 secretaries that work in the office.

16 Q. Who told them what to write?

17 A. I did.

18 Q. Before you told the secretaries to  
19 write these documents that are attached as Exhibits  
20 A and B to Exhibit P-27, I take it you heard  
21 something from Mr. Eisenreich?

22 A. Correct.

23 Q. What was the nature of that  
24 communication; was it phone, was it fax, was it  
25 e-mail?

1           A.       I believe it was a phone call from  
2 him.

3           Q.       And what did he say?

4           A.       I believe, I don't recall, obviously,  
5 the particulars of the conversation in detail, but I  
6 recall that he said that he was making a loan to the  
7 hospital, or something like that, and he needed the  
8 loan documents quickly, a note, and I should please  
9 prepare it and get it over to him.

10          Q.       Is that all he told you?

11          A.       Yes, that I recall.

12          Q.       Well, did he tell you who the  
13 hospital was?

14          A.       Well, he obviously told me who the  
15 borrower was, so I'm sure he did give me that  
16 information, yes.

17          Q.       Did he tell you the amount?

18          A.       Yes.

19          Q.       Do you recall it?

20          A.       No.

21          Q.       Do you recall him talking to you  
22 about anything else, the term, anything?

23          A.       As I sit here today, without looking  
24 at the note, I don't recall the particulars of the  
25 transaction, other than he said he was making a loan

1           A.       I believe it was a phone call from  
2 him.

3           Q.       And what did he say?

4           A.       I believe, I don't recall, obviously,  
5 the particulars of the conversation in detail, but I  
6 recall that he said that he was making a loan to the  
7 hospital, or something like that, and he needed the  
8 loan documents quickly, a note, and I should please  
9 prepare it and get it over to him.

10          Q.       Is that all he told you?

11          A.       Yes, that I recall.

12          Q.       Well, did he tell you who the  
13 hospital was?

14          A.       Well, he obviously told me who the  
15 borrower was, so I'm sure he did give me that  
16 information, yes.

17          Q.       Did he tell you the amount?

18          A.       Yes.

19          Q.       Do you recall it?

20          A.       No.

21          Q.       Do you recall him talking to you  
22 about anything else, the term, anything?

23          A.       As I sit here today, without looking  
24 at the note, I don't recall the particulars of the  
25 transaction, other than he said he was making a loan

1 location where you keep track of invoices, whether  
2 they've been paid or not?

3 A. The attorney, either myself or my  
4 partner, now more so my partner, when we close a  
5 transaction, we present an invoice. We usually get  
6 paid. And if for some reason we don't get paid, the  
7 attorney handling that matter will keep his own  
8 records. If there's an open invoice out there, he's  
9 got to be on top of it. There's no central, like,  
10 bookkeeping department or anything like that.

11 Q. Well, I do believe that an invoice,  
12 if any exists, would be responsive to the subpoena.  
13 So I have to ask you to do a search. And I can't  
14 complete the deposition until I know if there is an  
15 invoice or not.

16 A. I'd be glad to.

17 Q. The form of the promissory note, did  
18 you give any thought to using any particular form  
19 for this transaction?

20 A. It's my standard form.

21 Q. It's standard for what kind of loan?

22 A. For any loan. It would be modified  
23 if there were particulars. Maybe if it was secured  
24 by a pledge of an interest, it would be in there; if  
25 it was secured by a real estate mortgage, that may

1 be added. Obviously, the particulars of a  
2 transaction would modify the note, but the form  
3 itself is my standard form that I use.

4 Q. And this note indicates it's due in  
5 the year end, December 31, 2006?

6 A. It does.

7 Q. Do you know where that date came  
8 from?

9 A. I don't.

10 Q. You presume you got it from Mr.  
11 Eisenreich?

12 A. Correct.

13 Q. Did you talk to anyone at Bayonne  
14 Medical Center relating to this note?

15 A. No.

16 Q. Exhibit B to the subpoena is titled  
17 "Corporate Resolution." This is a document you  
18 prepared, as well?

19 A. I believe so.

20 Q. And who told you to prepare a  
21 corporate resolution?

22 A. I believe it was Mr. Eisenreich who  
23 told me he needed a note and a resolution.

24 Q. He told you he needed a note, as well  
25 as a resolution?

1           A.       I don't recall the conversation with  
2   great detail. I don't know if he said to me, I need  
3   a note and a corporate resolution, or he said to me,  
4   I need a note, and I said to him, And you need a  
5   corporate resolution. I'd be wrong if I told you I  
6   remember the specifics of who said what to who in  
7   terms of the corporate resolution.

8           Q.       Why was a corporate resolution  
9   needed?

10          A.       It's a corporate loan and we wanted  
11   to make sure it's authorized.

12          Q.       What did you think needed to happen  
13   in order for this loan to be authorized?

14          A.       That the board of directors and  
15   officers approve the loan.

16          Q.       How did you send this promissory note  
17   and corporate resolution to Mr. Eisenreich?

18          A.       I don't recall.

19          Q.       So you don't recall if it was  
20   e-mailed or anything like that?

21          A.       I don't.

22          Q.       Now, let me ask you, was this  
23   document done on a word processor?

24          A.       As opposed to?

25          Q.       A typewriter.

# **EXHIBIT**

## **#92**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY  
CASE NO. 07-15195(MS)  
CHAPTER 11

In re BAYONNE MEDICAL CENTER, :

Debtor, :

BAYONNE MEDICAL CENTER, :  
Debtor and :

Debtor-in-Possession; and :

ALLEN D. WILEN, in his :

capacity as Liquidating :

Trustee and Estate :

Representative for the Estate :

of Debtor, Bayonne Medical :

Center, :

Plaintiff, :

-vs- :

BAYONNE/OMNI DEVELOPMENT, :

L.L.C., a New Jersey limited :

liability company; et al., :

Defendants. :

-----  
B E F O R E:

SHARON B. STOPPIELLO, a Certified Court  
Reporter and Notary Public of the State of New  
Jersey, at the offices of CONNELL FOLEY, L.L.P., 85  
Livingston Avenue, Roseland, New Jersey, on  
THURSDAY, MAY 6, 2010, commencing at 10:09 a.m.,  
pursuant to Notice...

DepoLink  
Court Reporting & Litigation Support Services  
Phone (973) 353-9880 Fax (973) 353-9445  
www.depolinklegal.com



1 THE WITNESS: It says --

2 MR. GRUEN: Excuse me. There's no  
3 question.

4 Q. We can agree that you're still  
5 discussing parts of the deal on June 12th, 2006?

6 MR. SAMSON: Hold on a second.

7 MR. GRUEN: Objection to form of the  
8 question.

9 MR. SAMSON: How do you define the  
10 "deal"? Because there's an asset and purchase  
11 agreement, there's also a lease. There's different  
12 components of the deal. So if you could just be a  
13 little more precise. I think you're talking about  
14 one thing, perhaps, and she's talking about another.

15 Q. Do you consider the lease separate  
16 and apart from the sale of the building?

17 A. My conversations with him were  
18 separate and apart from that. We had separate lease  
19 conversations, yeah.

20 Q. Did the board ever authorize  
21 administration to enter into a long-term lease of  
22 space with the skilled nursing facility, to your  
23 knowledge?

24 A. I don't know how to answer that  
25 question.

1 Q. It wasn't discussed at the June  
2 meeting, to your knowledge, correct?

3 A. No.

4 Q. So then am I understanding your  
5 testimony that there were issues with respect to the  
6 lease that still needed to be resolved after June 8,  
7 2006?

8 MR. GRUEN: Objection to form.

9 MR. SAMSON: Objection, form. Do you  
10 understand the question?

11 THE WITNESS: I'm really not  
12 understanding. Ask me a direct question and I'll  
13 give you a direct answer, I promise.

14 Q. I'm trying the best I can.

15 A. All right.

16 Q. June 8th, 2006, your understanding  
17 was, correct me if I'm wrong, the deal is done.

18 MR. GRUEN: Objection to form.

19 A. No. My understanding was that the  
20 board passed the resolution to purchase the nursing  
21 home.

22 Q. To purchase or --

23 A. I'm sorry, for Omni to purchase the  
24 Bell building. I beg your pardon.

25 Q. And what is your understanding of